UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN GORMAN,

Plaintiff,

v.

RENSSELAER COUNTY, SHERIFF JACK MAHAR, ANTHONY PATRICELLI, UNDERSHERIFF PATRICK RUSSO, COUNTY HUMAN RESOURCES MANAGER TOM HENDRY, COUTY EXECUTIVE KATHLEEN JIMINO,

Defendants.

ANSWER TO SECOND AMENDED COMPLAINT
Civil Action No. 1:14-cv-434 (LEK/RFT)

Defendants, Rensselaer County, Sheriff Jack Mahar, Anthony Patricelli, Undersheriff Patrick Russo, County Human Resources Manager Tom Hendry and County Executive Kathleen Jimino, as and for their Answer to the Second Amended Complaint in the above-captioned matter, state as follows:

2. DENY the allegations in paragraph 2 of the Second Amended Complaint.

3. The allegations of paragraphs 3, 4, 5 and 6 of the Second Amended Complaint allege legal conclusions and do not allege any facts to which a response is required. To the extent that paragraphs 3, 4, 5 and 6 of the Second Amended Complaint allege any facts, Defendants DENY such allegations.

4. ADMIT, upon information and belief, the allegations of paragraphs 7, 8, 9, 10, 11, 12 and 13 of the Second Amended Complaint.

5. DENY the allegations contained in paragraphs 14, 15 and 16 of the Second

Amended Complaint.

6. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraphs 17, 18, 19, 20, 21, 22, 23 and 24 of the Second Amended Complaint, and therefore DENY such allegations.

7. DENY the allegations contained in paragraphs 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 of the Second Amended Complaint.

8. ADMIT the allegations of paragraphs 39 and 40 of the Second Amended Complaint.

9. DENY the allegations contained in paragraphs 41, 42, 43 and 44 of the Second Amended Complaint.

10. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Second Amended Complaint, and therefore DENY such allegations.

11. DENY the allegations contained in paragraph 46 of the Second Amended Complaint.

12. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraph 47 and 48 of the Second Amended Complaint, and therefore DENY such allegations.

13. DENY the allegations contained in paragraph 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 of the Second Amended Complaint.

14. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Second Amended Complaint, and

therefore DENY such allegations.

15. DENY the allegations of paragraphs 60, 61, 62, 63, 64, 65, 66, 67 and 68 of the Second Amended Complaint.

16. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraph 69, 70, and 71 of the Second Amended Complaint, and therefore DENY such allegations.

17. ADMIT the allegations of paragraph 72, 73 and 74 of the Second Amended Complaint.

18. DENY the allegations of paragraph 75, 76 and 77 of the Second Amended Complaint.

19. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraphs 78, 79 and 80 of the Second Amended Complaint, and therefore DENY such allegations.

20. ADMIT the allegations of paragraph 81, 82, 83 and 84 of the Second Amended Complaint.

21. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraphs 85 and 86 of the Second Amended Complaint, and therefore DENY such allegations.

22. ADMIT the allegations of paragraphs 87, 88, 89 and 90 of the Second Amended Complaint.

23. DENY the allegations of paragraphs 91 and 92 of the Second Amended Complaint.

24. ADMIT the allegations of paragraph 93 of the Second Amended Complaint.

25. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraphs 94 and 95 of the Second Amended Complaint, and therefore DENY such allegations.

26. ADMIT the allegations of paragraph 97 of the Second Amended Complaint that Plaintiff received a letter from Defendant Hendry, and affirmatively states that the letter from Mr. Hendry should be seen in its entirety and speaks for itself, and DENY each and every other allegation of paragraph 97 of the Second Amended Complaint.

27. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraphs 97 and 98 of the Second Amended Complaint, and therefore DENY such allegations.

28. ADMIT, upon information and belief, the allegations of paragraph 99 and 100 of the Second Amended Complaint.

29. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraph 100 of the Second Amended Complaint, and therefore DENY such allegations.

30. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraphs 101 and 102 of the Second Amended Complaint, and therefore DENY such allegations.

31. ADMIT the allegations of paragraph 103 of the Second Amended Complaint.

32. DENY the allegations of paragraphs 104, 105, 106 and 108 of the Second Amended Complaint.

33. ADMIT the allegations of paragraphs 109, 110, 111 of the Second Amended Complaint except to affirmatively state that the letter refereed to in paragraph 110 should be seen in its entirety and speaks for itself, and Defendants DENY the statement in the letter that the investigation was incomplete.

34. DENY the allegations of paragraph 112 of the Second Amended Complaint.

35. ADMIT the allegations of paragraphs 113 and 114 of the Second Amended Complaint.

36. DENY the allegations of paragraphs 115 of the Second Amended Complaint.

37. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraphs 116, 117, 118, 119, 120 and 121 of the Second Amended Complaint, and therefore DENY such allegations.

38. DENY the allegations of paragraphs 122, 123 and 124 of the Second Amended Complaint.

39. ADMIT the allegations of paragraphs 125 and 126 of the Second Amended Complaint.

40. DENY the allegations of paragraphs 127 and 128 of the Second Amended Complaint.

41. ADMIT the allegations of paragraph 129 of the Second Amended Complaint.

42. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraphs 130 and 131 of the Second Amended Complaint, and therefore DENY such allegations.

43. DENY the allegations of paragraphs 132, 133, 134, 135 and 136 of the Second

Amended Complaint.

44. ADMIT the allegations of paragraph 137 of the Second Amended Complaint.

45. DENY the allegations of paragraph 138 of the Second Amended Complaint.

46. ADMIT the allegations of paragraphs 139 and 140 that Rensselaer County received citations from the New York State Department of Labor, but DENY each and every other allegation of paragraphs 139 and 140 and refer the Court to the citations for a full and fair reading of their terms.

47. DENY the allegations of paragraphs 141, 142, 143 and 144 of the Second Amended Complaint.

48. ADMIT the allegations of paragraphs 145 of the Second Amended Complaint that Plaintiff called in sick on July 14, 2013, but LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraph 145 of the Second Amended Complaint, and therefore DENY such allegations.

49. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraphs 146 and 147 of the Second Amended Complaint, and therefore DENY such allegations.

50. ADMIT the allegations of paragraph 148 that plaintiff filed a 207-c application and provided it to Captain Smith, but DENY each and every other allegation of paragraph 148 of the Second Amended Complaint.

51. ADMIT the allegations of paragraphs 149 and 150 of the Second Amended Complaint.

52. DENY the allegations of paragraph 151 of the Second Amended Complaint.

53. ADMIT the allegations of paragraph 152 of the Second Amended Complaint.

54. ADMIT the allegation in paragraph 153 of the Second Amended Complaint that a second workplace violation complaint was filed with the New York State Department of Labor, but LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the remaining allegations of paragraph 153 and therefore DENY such allegations.

55. ADMIT the allegation of paragraph 154 of the Second Amended Complaint that a demand for arbitration was filed with New York's Public Employee Relations Board, but DENY the remaining allegations of paragraph 154.

56. ADMIT the allegations of paragraph 155 of the Second Amended Complaint.

57. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraph 156, 157, 158 and 159 of the Second Amended Complaint, and therefore DENY such allegations, and refers the Court to any such letters or diagnosis for a full and fair reading of its terms.

58. ADMIT the allegations of paragraph 160 of the Second Amended Complaint.

59. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraph 161, 162, 163 and 164 of the Second Amended Complaint, and therefore DENY such allegations.

60. ADMIT that Defendant Jimino has not responded to any of Plaintiff's requests herself but DENY the remaining allegations of paragraph 165 of the Second Amended Complaint.

61. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the

truth of the allegations contained in paragraph 166 of the Second Amended Complaint, and therefore DENY such allegations.

62. DENY the allegations of paragraph 167, 168 and 169 of the Second Amended Complaint.

63. ADMIT the allegations of paragraph 170 of the Second Amended Complaint that allegations of workplace violence had been "unfounded" and refers the court to Dr. Macintyre's report for a full and fair reading of its terms and DENY each and every other allegation of paragraph 170.

64. DENY the allegations of paragraph 171 and 172 of the Second Amended Complaint.

65. ADMIT the allegations of paragraph 173 of the Second Amended Complaint.

66. DENY the allegations of paragraphs 174, 175 and 176 of the Second Amended Complaint.

67. ADMIT the allegations of paragraphs 178, 179 and 180 of the Second Amended Complaint and refers the court to the answer in the workers compensation claim for full and fair statement of the defenses raised in that case.

68. ADMIT the allegations that the Workers Compensation Judge made a determination regarding Plaintiff's workers compensation claim and refers the court to the decision for a full and fair reading of its terms, and that Defendants appealed such decision, but DENY all of the remaining allegations of paragraph 181 of the Second Amended Complaint.

69. ADMIT the allegations of paragraph 182 of the Second Amended Complaint 70.

70. ADMIT the allegations of paragraph 183 of the Second Amended Complaint that there was a meeting in August 2014, but DENY the remaining allegations and characterizations of paragraph 183 of the Second Amended Complaint.

71. LACK KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth of the allegations contained in paragraph 184, 185, 186, 187, 188, 189 and 190 of the Second Amended Complaint, and therefore DENY such allegations.

72. DENY each and every allegation of the Second Amended Complaint not specifically admitted to herein.

AS TO THE FIRST CAUSE OF ACTION

73. Repeats and realleges the above responses to the allegations of paragraphs "1" through "190" of the Second Amended Complaint as if set forth in full.

74. Paragraphs 192 and 193 of the Second Amended Complaint characterize 42 U.S.C. §1983 and the Bill of Rights to the United States Constitution, and do not allege any facts to which a response is required. To the extent that paragraph 192 and 193 of the Second Amended Complaint allege any facts, Defendants DENY such allegations.

75. DENY the allegations of paragraphs 193, 194, 195, 196, 197 and 198 of the Second Amended Complaint.

AS TO THE SECOND CAUSE OF ACTION

76. Repeats and realleges the above responses to the allegations of paragraphs "191" through "198" of the Second Amended Complaint as if set forth in full.

77. DENY the allegations of paragraphs 199, 200, 201, 202, 203, 204, 205 and 205 of the Second Amended Complaint.

AS TO THE THIRD CAUSE OF ACTION

78. Repeats and realleges the above responses to the allegations of paragraphs “199” through “206” of the Second Amended Complaint as if set forth in full.

79. DENY the allegations of paragraphs 207, 208, 209, 210, 211, 212, 213 and 214 of the Second Amended Complaint.

AS TO THE FOURTH CAUSE OF ACTION

80. Repeats and realleges the above responses to the allegations of paragraphs “207” through “214” of the Second Amended Complaint as if set forth in full.

81. DENY the allegations of paragraphs 215, 216, 217, 218, 219, 220, 221 and 222 of the Second Amended Complaint.

AS TO THE FIFTH CAUSE OF ACTION

79. Repeats and realleges the above responses to the allegations of paragraphs “215” through “222” of the Second Amended Complaint as if set forth in full.

80. DENY the allegations of paragraphs 223, 224, 225, 226, 227, 228 and 229 of the Second Amended Complaint.

AS TO THE SIXTH CAUSE OF ACTION

81. Repeats and realleges the above responses to the allegations of paragraphs “223” through “229” of the Second Amended Complaint as if set forth in full.

82. DENY the allegations of paragraphs 230, 231, 232, 233, 234, 235 and 236 of the Second Amended Complaint.

AS TO THE SEVENTH CAUSE OF ACTION

83. Repeats and realleges the above responses to the allegations of paragraphs “230”

through “236” of the Second Amended Complaint as if set forth in full.

84. DENY the allegations of paragraphs 237, 238, 239 and 240 of the Second Amended Complaint.

AS TO THE EIGHTH CAUSE OF ACTION

85. Repeats and realleges the above responses to the allegations of paragraphs “237” through “240” of the Second Amended Complaint as if set forth in full.

86. DENY the allegations of paragraphs 241, 242, 243, 244, 245 and 246 of the Second Amended Complaint.

AS TO THE NINTH CAUSE OF ACTION

87. Repeats and realleges the above responses to the allegations of paragraphs “241” through “246” of the Second Amended Complaint as if set forth in full.

88. DENY the allegations of paragraphs 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260 and 261 of the Second Amended Complaint.

AS TO THE TENTH CAUSE OF ACTION

89. Repeats and realleges the above responses to the allegations of paragraphs “247” through “261” of the Second Amended Complaint as if set forth in full.

90. DENY the allegations of paragraphs 262, 263, 264, 265, 266, 267 and 268 of the Second Amended Complaint.

AS TO THE ELEVENTH CAUSE OF ACTION

91. Repeats and realleges the above responses to the allegations of paragraphs “262” through “268” of the Second Amended Complaint as if set forth in full.

92. DENY the allegations of paragraphs 269, 270 and 271 of the Second Amended

Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

93. The Second Amended Complaint fails, in whole or in part, to state a cause of action upon which relief may be granted and should be dismissed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

94. That in the event that the Plaintiff is awarded judgment against any of the answering defendants, these defendants are entitled to a set-off or a reduction of any such damage award for all amounts received by or on behalf of the Plaintiff from any collateral source pursuant to N.Y. CPLR §4545(c).

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

95. Plaintiff lacks standing to litigate claims based upon the collective bargaining agreement applicable to his employment.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

96. The Plaintiff has failed to join necessary parties.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

97. In the event the Plaintiff recovers a judgment against the Answering Defendants, then these Defendants demand that any such judgment be diminished in accordance with Article 16 of the CPLR.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

98. Upon information and belief, the Plaintiff has failed to mitigate damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

99. Upon information and belief, Plaintiff's claims are barred, in whole or in part, on

the grounds of a superceding cause of Plaintiff's injuries for which Answering Defendants cannot be held responsible.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

100. The claim is barred, in whole or in part, on the grounds of failure to meet conditions precedent to suit.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

101. The Second Amended Complaint is barred in whole or in part by the applicable statutes of limitation.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

102. The Second Amended Complaint is barred, in whole or in part, on the grounds of absolute or qualified immunity.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

103. The Second Amended Complaint is barred, in whole or in part, on the grounds of collateral estoppel.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

104. If the Plaintiff has been injured or damaged as alleged in the Complaint, such injuries and damages were caused, in whole or in part, or were contributed to, by the carelessness, negligence, recklessness and want of care on the part of third parties over which answering Defendants had no control and for which the actions of such third parties are not attributable to the Answering Defendants.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

105. That the Plaintiff's injuries, upon information and belief, were caused or con-

tributed to by Plaintiff's own carelessness, negligence or want of care.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

106. The Answering Defendants are entitled to setoff pursuant to General Obligations Law Section 15-108 in the event of any award made against the Answering Defendants.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

107. That the Plaintiff's claims are barred, in whole or in part, for failure to comply with New York's General Municipal Law pleading requirements and precedents to suit.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

108. That the Plaintiff's claims are barred, in whole or in part, by New York's Workers Compensation Law exclusivity provision.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

110. That the Plaintiff has failed to timely and properly exhaust all necessary administrative, statutory, arbitration remedies and/or jurisdictional prerequisites for the commencement of this action.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

111. The Defendants acted within the scope their official duties an acted with objective good faith, for legitimate and nondiscriminatory reasons, and Defendants may not be subject to any liability under the Second Amended Complaint.

AS AND FOR AN NINETEENTH AFFIRMATIVE DEFENSE

112. Some or all of the causes of action are barred by federal law preemption.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

113. Plaintiffs claim for punitive damages and/or attorneys fees are barred as against

some or all of the Answering Defendants as am after of law.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

114. Plaintiffs claims are barred in whole or in part on the grounds of election of remedies.

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

115. Plaintiffs is estopped and or his claims are barred on the grounds of estoppel and the doctrine of in pari delicto.

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

116. Plaintiff claims for disability discrimination are barred on the grounds that he could not be accommodated due to undue hardship.

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

117. Plaintiff's claims for demotion, loss of key duties, for failing to be promoted, and other such claims do not allege an "adverse employment action" under applicable law or any claim alleged in the Second Amended Complaint.

WHEREFORE, Defendants respectfully request that this Court dismiss the Seond Amended Complaint in its entirety with prejudice and award Defendants costs, attorneys fees and such other relief as the Court deems appropriate.

Dated: September 3, 2015
Utica, New York

Respectfully submitted,

MARTIN & RAYHILL, PC

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